

# RIGHT OF SEARCH.

## INTERESTING LETTER FROM THE CITY SOLICITORS ON THE RIGHT OF SEARCH.

WONDERFUL WORKING OF THE SCOTT ACT  
IN THE TOWN OF ST. STEPHENS, N. B.

HAMILTON, Jan. 12, 1881.

D. B. CHISHOLM, ESQ.,

DEAR SIR,—

As requested by you, we have considered the clauses in the Temperance Act of 1878, (known as the SCOTT ACT), with a view to expressing our opinion as to how far the objections to the Right of Search therein provided for, can fairly be regarded in the practical operation of the Statute when put in force in any locality.

We presume that the effect of a fair and reasonable exercise of the provisions of the Act is what we are desired to discuss, rather than the question of how far it might be pos-

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sible to abuse these provisions.

The 108th section,—the Search Warrant Clause of the Act,—appears to us to contain reasonable safeguards against any wanton interferences with the rights of individuals. In the first place, the Warrant can only be obtained upon the *oath* of a *credible* witness. Some force must be given to the word *credible*. We take it that the Magistrate must be satisfied that the informant is a person whose veracity is unquestioned. The *oath* in itself is a safeguard. Few persons are willing to expose themselves to the risk of a prosecution for perjury ; and the form of information necessary to obtain a Search Warrant, as given in the Schedule to the Act, seems to be framed in such a way as to prevent any looseness in this respect. It requires not only that “the credible  
“ witness should *swear* that he hath  
“ just and reasonable cause to suspect,  
“ and does suspect that intoxicating  
“ liquors (in respect to which an  
“ offence against the second part of the  
“ Canada Temperance Act, 1878, hath

“ been committed), is *concealed* in the “ house, etc.,” but he must also “ *add the causes of his suspicion, and the particulars of the offence, whatever they may be.*”

From this it will be observed that a mere statement of a witness that there is reasonable cause to suspect, etc., is not sufficient, but the grounds for such suspicion must be given.

In the next place, we think that this Search Warrant is intended to be issued only where a prosecution has already been commenced, and the case is under adjudication, and is in reality merely a subsidiary process, to be made use of in tracing out violations of the Act.

And further than this, the Police Magistrate has a discretion in the matter ; is not obliged to, but *may* grant the Search Warrant.

It seems to us, therefore, that the proper view to take of the section, is simply this : There must be a charge made of a violation of the Act, by the sale of liquor, and with a view of sustaining this charge, (there being reason-

able cause to suspect that the liquor so sold illegally, is *concealed* in some house, etc.), a *credible* witness upon *oath* may obtain a Search Warrant, if the magistrate in his discretion sees fit to grant it, to search for the supposed contraband liquor and have it brought before the court.

Yours truly,

MACKELCAN, GIBSON & BELL.

## Arrests for Drunkenness in the Town of St. Stephens, with a Population of 4,000.

UNDER LICENSE.		UNDER SCOTT ACT.
1879.		1880.
Month of	May, 7	3
"	June, 5	1
"	July, 11	0
"	Aug, 2	0
"	Sept. 5	0
"	Oct. 3	0
"	Nov. 5	0
"	Dec. 3	0
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41		4

The above is the official report for the 8 months the Scott Act has been in force.